

Linda Glass



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: CDS Associates
File: B-245952
Date: December 6, 1991

Shelby V. Candland for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed as untimely where initial agency-level protest of award was filed more than 10 working days after protester learned of basis for protest.

DECISION

CDS Associates protests the award of a contract to Gonzaga University under request for proposals (RFP) No. DACW68-91-R-0018, issued by the Walla Walla District of the United States Army Corps of Engineers for the design, development, and administration of a management intern program for the Walla Walla District. CDS alleges that the RFP was issued as a 100 percent small business set-aside and that Gonzaga is a nonprofit organization and therefore not eligible for award under the solicitation.¹

We dismiss the protest as untimely.²

The RFP was issued on May 27, 1991, with a closing date for receipt of proposal of July 2. Eleven proposals, including one from the protester, were received by the closing date. After evaluation of the proposals, award was made without discussions to Gonzaga, the lowest priced technically acceptable offer, on August 2. By letter dated August 8, CDS was notified of the award to Gonzaga. CDS protested the award to the contracting officer by letter dated

¹Nonprofit organizations are not small business concerns as defined by Federal Acquisition Regulation § 19.001.

²We dismiss this protest as untimely based on information submitted by the Corps, in its report, establishing that CDS' agency-level protest is untimely.

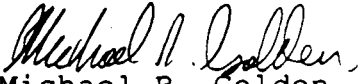
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September 10 and received by the agency on September 16. CDS subsequently filed a protest with our Office on October 1.

Our Bid Protest Regulations require that protests be filed no later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely under our Regulations, CDS' agency-level protest would have to have been filed within 10 working days after it learned of the basis of its protest.

CDS stated in its initial protest submission that it received notice of the award to Gonzaga by August 10. CDS, in its comments, now states it does not have a record of the precise day on which it received the notice from the Corps. We assume mail is received within 1-calendar week from the date it was sent. Scan-Tech Sec., B-243741, May 22, 1991, 91-1 CPD ¶ 501. Thus, for timeliness purposes, we assume CDS received the August 8 notice by August 15. While CDS argues that the notice of award omitted certain required information, such as the number of offerors solicited and proposals received, the notice did contain the name of the awardee. Even giving CDS the benefit of the doubt as to when it received the notice, by approximately August 15, CDS knew Gonzaga was the awardee and could have easily determined Gonzaga's status as a nonprofit organization. Consequently, CDS' agency-level protest filed (received by the agency) on September 16, more than 10 working days after receipt of the award notification, was untimely under the above standard.

The protest is dismissed.


Michael R. Golden
Assistant General Counsel